IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 685 of 2002

With

CIVIL APPLICATION NO. 6502 of 2002
in
SPECIAL CIVIL APPLICATION No. 10999 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

and

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BANK OF RAJASTHAN LTD.

Versus

KARAN FIBRES AND FABRICS LTD.

Appearance:

1. LETTERS PATENT APPEAL No. 685 of 2002

MR AMAR N BHATT for Appellant No.

MR HASIT DILIP DAVE for Respondent No. 1

NOTICE UNSERVED for Respondent No. 2,7

UNSERVED-REFUSED (N) for Respondent No. 2,3,7

NOTICE SERVED BY DS for Respondent No. 4,4-6

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE K.A.PUJ

Date of decision: 19/02/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

The appellant Bank, is the original-respondent, at whose instance, by this Letters Patent Appeal under Clause 15 of the Letters Patent, the challenge is made against the judgment and order passed on 3rd July 2002 by the learned Single Judge [Coram: D.A. Mehta, J.], inter alia, contending that the impugned order, quashing the order dated 5th May 1999 of the Debts Recovery Tribunal, Ahmedabad, is unjust and illegal.

2. The respondents, in this Letters Patent Appeal, are the original-petitioners and the appellant is the original-respondent Bank. The appellant Bank initiated legal battle by filing Original Application No. 110 of 1998 against the respondents before the Debt Recovery Tribunal [DRT] claiming a sum of Rs. 4,07,32,789/= with costs and future interests invoking the provisions of Section 17 and 19 of The Recovery of Debts Due To Banks And Financial Institutions Act, 1993 [Act]. The DRT, by its order dated 4/5-5-1999, allowed the Original Application No. 110 of 1998 in favour of the appellant against the respondents as despite seeking adjournment for filing reply failed to file the reply. The matter was, thereafter, posted on several dates. On behalf of the appellant, affidavit came to be filed in support of the Original Application. Again, the matter was adjourned and, on several dates, the respondents did not appear.

3. Pursuant to the order of DRT, the appellant Bank started recovery proceedings, like that execution of the order dated 5-5-1999. The respondents filed Civil Miscellaneous Application No. 18 of 2001 for setting aside the ex-parte order dated 5-5-1999, with a prayer for condonation of delay of 760 days which came to be rejected by the Presiding Officer of the DRT by a speaking order dated 5.11.2001. The respondents, therefore, challenged the said order of rejection of Civil Misc. Application No. 18 of 2001, which came to be allowed by the learned Single Judge of this Court on 3.7.2002, which is directly under challenge before us in this Letters Patent Appeal.

4. We have heard the learned advocates appearing for the parties. We have also dispassionately considered the provisions of Sections 19 and 20 and the case law relied on by the learned advocates in course of the submissions to which reference will be made hereinafter.

5. Section 19, in Chapter IV of the Act provides the procedure of Tribunal. Section 20 of the Act reads as under:-

20. Appeal to the Appellate Tribunal.___

(1) Save as provided in sub-section (2), any person aggrieved by an order made, or deemed to have been made, by a Tribunal under this Act, may prefer an appeal to an Appellate Tribunal having jurisdiction in the matter.

(2) No appeal shall lie to the Appellate Tribunal from an order made by a Tribunal with the consent of the parties.

(3) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made, or deemed to have been made, by the Tribunal is received by him and it shall be in such form and be accompanied by such fee as may be prescribed :

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(4) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming modifying or setting aside the order appealed against.

(5) The Appellate Tribunal shall send a copy of every order made by it to the parties

to the appeal and to the concerned Tribunal.

(6) The appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal."

It could very well be visualised from the aforesaid provisions of Section 20 that any aggrieved party by the order of Tribunal may prefer an appeal to the Appellate Tribunal having jurisdiction in the matter. There is a condition precedent of depositing 75% of the amount of debt for filing an appeal, provided the Appellate Tribunal reduces the amount to be deposited.

6. Despite statutory prescription of appellate mechanism under the provisions of Section 20 of the Act against the order of the Tribunal to the Appellate Tribunal, the respondent, bypassing the said statutory provision, which Parliament may in its wisdom compatible with the design and desideratum of the Act, resorted to the constitutional writ jurisdiction. This pronouncement was canvassed before the learned Single Judge, but it was not accepted. The petition of the respondent, before us, came to be allowed by the learned Single Judge, by order dated 3rd July 2002 quashing the order dated 5th May 1999 and with a direction to the Tribunal to continue the proceedings of the Original Application No. 110 of 1998 as if no order had been passed on 5th May 1999 and also making observations in Para 7 of the impugned order.

7. We have considered the text and the context of the impugned judgment and the observations made in Para 7. In our opinion, the observations in Para 7 are not warranted. From the facts emerging on record, the order allowing the Original Application by the Tribunal, after several opportunities having been given to the respondents before us, by no stretch of imagination, could be said to be an illegal order or order without jurisdiction. This has a reference to the view taken by the learned Single Judge that the order of the Tribunal dated 5th May 1999 is not supportable.

8. Section 20 provides for an appeal against the order of the Tribunal. When statutory appellate mechanism is provided for, the aggrieved party has to avail and resort to appellate jurisdiction. So is not

done by the respondents before us. No doubt, it is true that there is no bar and ban in exercising writ jurisdiction under Article 226/227 of the Constitution of India when alternative remedy is provided for. Again, the constitutional writ jurisdiction is plenary, equitable, prerogative and discretionary power. It is a settled proposition of law that ordinarily when alternative remedy and that too by way of statutory appellate mechanism is provided for, Writ Court will not be inclined to entertain the petition against such order.

9. The Apex Court, in Punjab National Bank v. O.C. Krishnan and Others - (2001) 6 Supreme Court Cases 569, has, in clear terms and unequivocally expounded the proposition of law, in the light of the provisions of Section 20 of the Act, that in view of the remedy of appeal available under Section 20 of the Act, such a petition under Articles 226/227 should not be entertained, and when there is an alternative remedy available, judicial prudence demands that the Courts refrain from exercising its jurisdiction under the constitutional provisions. In our opinion, the case on hand is directly covered by the said decision of the Hon'ble Apex Court, and, we are of the opinion that the learned Single Judge should not have entertained the petition under Article 226/227 of the Constitution of India and should have directed the respondent to take recourse to the appeal mechanism provided by the Act.

10. Consequently, the impugned order, of the learned Single Judge, is quashed and set aside. The Appeal is allowed with costs. Obviously, in view of our aforesaid observations and discussions, it will be open for the respondents to pursue appropriate available alternative appellate remedy for the redressal of the grievance.

11. The Civil Application No.6502 of 2002 shall stand disposed of accordingly.

[J.N. Bhatt, J.]

rmr. [K.A. Puj, J.]